



**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-81270; File No. SR-Phlx-2017-56]**

**Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to a Proposal to Amend Rule 1027, Discretionary Accounts, to Conform it More Closely to a Comparable Rule of the Chicago Board Options Exchange (“CBOE”) and to Make Minor Corrections and Clarifications**

July 31, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 20, 2017, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 1027, Discretionary Accounts, to conform it more closely to a comparable rule of the Chicago Board Options Exchange (“CBOE”) and to make minor corrections and clarifications.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 1027 generally imposes restrictions and various requirements on members<sup>3</sup> and partners and employees of member organizations<sup>4</sup> regarding the exercise of

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<sup>3</sup> Exchange Rule 1(n) defines "member" as a permit holder which has not been terminated in accordance with the By-Laws and Rules of the Exchange. The Exchange has issued "Series A-1" permits, which confer on the holder rights and privileges, and impose on the holder the obligations, set forth in Exchange Rule 908. Under Exchange Rule 908(b) a Series A-1 permit may only be issued to an individual who is a natural person of at least twenty-one (21) years of age, or to a corporation meeting the eligibility and application requirements set forth in the By-Laws and Rules.

<sup>4</sup> Rule 1(o) defines "member organization" as "a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws." Rule 901(a) provides in part that "[t]he Membership Department shall have jurisdiction over the issuance of memberships (in respect of members and member organizations) and permits

discretionary power with respect to trading in options in a customer's accounts. The Exchange proposes to amend Rule 1027 in a number of respects to eliminate redundant rule text, clarify certain rule text, and conform parts of the rule more closely to CBOE Rule 9.10, Discretionary Accounts<sup>5</sup>.

*Rule 1027(a)*

Rules 1027(a)(i) and (ii) apply to stock or exchange-traded fund share options and foreign currency options respectively. These provisions prohibit the exercise of any discretionary power with respect to trading in options contracts in a customer's account unless such customer has given prior written authorization with respect to such trading and the account has been accepted in writing by a designated Registered Options Principal or, in the case of foreign currency options, a Foreign Currency Options Principal.

Rule 1027(a)(i) is proposed to be amended to include index options, as their current exclusion from the rule is without a rational basis and was likely an oversight.

References to Registered Options Principal "qualified persons" or "qualified individuals"

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and over applications by non-members for admission as members." Rule 901(c) provides that "[a]ll applications to qualify and register a corporation or other entity as a member organization and all applications for reinstatement of any qualification or registration of a member organization shall be referred to the Membership Department which shall investigate and act thereon."

<sup>5</sup> CBOE Rule 9.10 was substantially amended in Securities Exchange Act Release No. 56492 (September 21, 2007), 72 FR 54952 (September 27, 2007) (SR-CBOE-2007-106) to create a supervisory structure for options that is similar to that required by New York Stock Exchange ("NYSE") and National Association of Securities Dealers ("NASD") rules. On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

in Rule 1027(a)(i) are proposed to be amended in order to refer only to “Registered Options Principals”, in order to eliminate needless ambiguity and lack of clarity as to who is a Registered Options Principal “qualified person” or “qualified individual.” Additionally, the last two sentences of Section (a)(i) currently provide that every discretionary order shall be identified as discretionary at the time of entry, and that discretionary accounts shall receive frequent review by a Registered Options Principal qualified person specifically delegated such responsibilities under Rule 1025, who is not exercising the discretionary authority. These sentences are largely duplicative of existing Rule 1027(a)(iii) and are therefore proposed to be deleted. The rule would be expanded to cover member organizations, to be more consistent with the comparable CBOE rule which applies to CBOE Trading Permit Holder (“TPH”) organizations.<sup>6</sup>

The Exchange proposes to delete from Section (a)(iii) a reference to “Compliance Registered Option Principal”, a term which the Exchange no longer uses, and proposes to substitute the term “Registered Options Principal”. It also proposes to amend that section by adding language requiring the Registered Options Principal providing appropriate supervisory review to be specifically delegated such responsibilities under Rule 1025 and not be the Registered Options Principal exercising the discretionary review. These changes would conform Section (a)(iii) to the duplicative language deleted from Section (a)(i) as described above. The Exchange also proposes to delete the last sentence of Section (a)(iii), which provides that the provisions of paragraph (a) shall not apply to discretion as to the price at which or the time when an order given by a customer for the

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<sup>6</sup> Rule 1027(a)(ii) deals with foreign currency options and has no counterpart in CBOE Rule 9.10(a). The Exchange is nevertheless proposing to revise Rule 1027(a)(ii) by expanding its scope to include member organizations for consistency with Rule 1027(a)(i) in terms of extent of coverage of the rule.

purchase or sale of a definite number of option contracts in a specified security or foreign currency shall be executed. This sentence is largely duplicative of existing language in Rule 1027(e), Discretion as to Time or Price Excepted. Rule 1027(e), however, is proposed to be amended by the addition of a reference to “foreign currency” which was present in the deleted sentence of Section (a)(iii).

The Exchange is proposing no changes to section (a)(iv) which extends the provisions of Rule 1027 to index warrants, as no changes are required.

#### *Rule 1027(c) Prohibited Transactions*

Currently, Rule 1027(c) prohibits members as well as partners, officers and employees of a member organization having discretionary power over a customer's account from, in the exercise of such discretion, executing or causing to be executed therein any purchases or sales of option contracts which are excessive in size or frequency in view of the financial resources in such account. The prohibition is proposed to be reworded, to conform Phlx Rule 1027(c) more closely to CBOE Rule 9.10, Discretionary Accounts, section (c). Additionally, the rule would be expanded to cover member organizations as well as members and partners and employees of member organizations.

#### *Rule 1027(d) Record of Transactions*

Rule 1027(d) currently requires a record to be made of every transaction in option contracts in respect to which a member or a partner, officer or employee of a member organization has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, the premium and the date and time when such transaction was effected. The Exchange

proposes to reword the rule so that it applies to option transactions for an account in respect to which a member or member organization or a partner, officer or employee of a member organization is vested with any discretionary authority, and to detail the required content of the record. The revision proposed for Rule 1027(d) would conform the rule more closely to CBOE Rule 9.10, Discretionary Accounts, section (b), which extends to CBOE TPH organizations, except that the Exchange proposes to retain the existing requirement that the transaction record clearly reflect that the member (or, as the rule is proposed to be amended, member organization) or a partner, officer or employee of a member organization has exercised discretionary authority, as the Exchange believes this to be important information with respect to a transaction.

*Rule 1027(e)*

As discussed above the Exchange proposes to amend Rule 1027(e), which generally excludes price and time discretion from the requirements of Rule 1027, to cover foreign currency options. The Exchange also proposes to correct an internal cross reference to “this paragraph (d)” which should read “this paragraph (e)”.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

amendment of the requirements associated with discretionary accounts should remove impediments to and perfect the mechanism of a free and open market and a national market system, by eliminating redundant rule text, clarifying certain rule text, and conforming parts of the rule more closely to CBOE Rule 9.10, Discretionary Accounts which should create greater regulatory parity among options exchanges regarding obligations toward customers' discretionary accounts – reducing a source of potential regulatory arbitrage - and by creating more efficient regulatory compliance by members of both exchanges due to reduction of differences in wording and consequent potential for inadvertent regulatory noncompliance. The Exchange believes it is in the public interest for a more consistently worded regulatory policy and standard regarding discretionary accounts to be in effect across options exchanges, for the benefit of customers. The harmonized rules are designed to further the goal of harmonized examinations and enforcement of similar rules, thus reducing duplicative regulatory efforts, thus lowering regulatory cost passed on to member organizations and the general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-56 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The



Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2017-56 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

